

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIAN BROWN,)	
)	Civil Action
Petitioner)	No. 2013-cv-07241
)	
)	
vs.)	
)	
SUPERINTENDENT JEROME BROWN,)	
THE DISTRICT ATTORNEY OF THE)	
COUNTY OF PHILADELPHIA and)	
THE ATTORNEY GENERAL OF THE)	
STATE OF PENNSYLVANIA,)	
)	
Respondents)	

O R D E R

NOW, this 11TH day of October, 2016, upon consideration of the following documents:

- (1) Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody¹
- (2) Complaint, which complaint is undated and was filed July 31, 2014; and
- (3) Recommendation of United States Magistrate Judge Jacob P. Hart filed November 24, 2014;

it appearing that as of the date of this Order that no objections have been filed to the Report and Recommendation of Magistrate Judge Hart; it further appearing after review of this matter that

¹ The date stamp from the Clerk of Court for the United States District Court for the Eastern District of Pennsylvania indicates the Mr. Brown's petition for writ of habeas corpus was filed on December 9, 2016. However, the petition itself indicates that it was signed by petitioner on November 12, 2013. Thus, giving petitioner the benefit of the prison mailbox rule, (See Burns v. Morton, 134 F.3d 109 (3d Cir. 1998) and Rule 3(d) of the Rules Governing Section 2254 Cases in the United States District Courts), I consider November 12, 2013 the filing date of Mr. Brown's original petition, contrary to the determination of Magistrate Judge Hart. (See Report and Recommendation at page 2).

Magistrate Judge Hart's Report and Recommendation correctly determined the legal and factual issues presented in the petition for habeas corpus relief,

IT IS ORDERED that Magistrate Judge Hart's Report and Recommendation is approved and adopted in part and modified in part.²

IT IS FURTHER ORDERED that the petition for habeas corpus relief is denied without an evidentiary hearing.

IT IS FURTHER ORDERED that because petitioner has not met statutory requirements to have his case heard, and no reasonable jurist could find this procedural ruling debatable, and because petitioner fails to demonstrate denial of a constitutional right, a certificate of appealability is denied.

IT IS FURTHER ORDERED that the Clerk of Court shall mark this matter dismissed.

BY THE COURT:

/s/ JAMES KNOLL GARDNER
James Knoll Gardner
United States District Judge

² As noted in footnote 1 above, I consider November 12, 2013 the filing date of Mr. Brown's original petition and modify page 2 of the Report and Recommendation to reflect that change pursuant to the prison mailbox rule. Burns, supra. This modification does not impact any factual or legal conclusion contained in the Report and Recommendation.